IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10813 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

ADULT TRAINING CENTRE (SCHOOL)FOR THE BLIND.

Versus

STATE OF GUJARAT

Appearance:

MR KM PATEL for Petitioner

MR DA BAMBHANIA for Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/12/97

ORAL JUDGEMENT

The petitioner - Adult Training Centre (school) for the Blind, Ahmedabad has filed this petition under Article 226 of the Constitution of India and the prayer has been made for setting aside the communication dated 19th July, 1996 at annexure - 'C' of the respondent State under which the respondent no. 2 declined to give grant to it in respect of two employees mentioned therein.

2. The facts of the case in brief are that the petitioner is a society registered under the Societies Registration Act, 1860. It is also a public trust registered under the Bombay Public Trusts Act, 1950. Two persons one Khimajibhai Ramabhai and Laxmanbhai Shivjibhai were engaged by the petitioner as attendants in the year 1984 on purely adhoc basis on fixed salary. It is not in dispute that these two persons were engaged by the petitioner without any selection or without following any procedure as laid down for recruitment for the post. It is also not in dispute that these persons were paid fixed salary by the petitioner from its own fund. It is also not in dispute that the daily wages appointments were made without prior approval or sanction of the State Government. However, it is made clear that as these appointments were not made against the sanctioned grant-in-aid posts and no sanction or approval of the State Government requires for making of the same. These two persons approached industrial tribunal at Ahmedabad by filing application u/s 33C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) praying for regularisation in service and to give them regular pay-scale. During the pendency of these proceedings these two persons were continued to work in the institution. It is not in dispute that the State Government or the Director of Social Welfare Department was not a party to the proceedings initiated by those two persons u/s 33C (2) of the Act. The parties to those proceedings had arrived at settlement on 20th October, 1994 which was produced before the industrial tribunal on 12-12-1994 with a prayer to decide the matter in terms of settlement and as per the settlement aforesaid, the petitioner has agreed to regularise the services of the said two employees and to give them regular pay-sacle of attendant i.e. Rs.750-940 with effect from 1-1-1993. In terms of the settlement the proceedings initiated by these two persons u/s 33C(2) of the Act accordingly an order has been passed by the industrial tribunal on 23-12-1994.

3. Reply to the Special Civil Application has been made by the respondent. The facts which are not in dispute are that the respondents accorded permission for eleven posts of different categories only for which the State Government agreed to give grant. Sanction for 8 posts was given under the order dated 10-3-69. Under the order dated 27-12-1978 further sanction of three posts is given.

4. After entering into the settlement in the proceedings initiated by these two employees the

petitioner has made a representation to the respondent no. 2 on 15th September, 1995 to release the grant for these two employees. This request was turned down by the respondent no. 2 under its communication dated 19th July, 1996. The respondents have given reasons in the reply for not accepting the prayer of the petitioner to release the grant for two posts as prayed for by the petitioner, which are as follows :- (i) The appointments to the sanctioned grant-in-aid posts are to be made after open selection from the eligible candidates. (ii) The appointments of these two persons were not made after inviting the applications from the open market and they have not been selected by the selection committee. (iii) These two posts are reserved for schedule caste and scheduled tribe one each. (vi) Under the order dated 28-10-91 the Government Administration has decided not to fill in any post and/or to extend any financial benefits to the institution.

5. The Government in the Social Welfare Department has instructed the petitioner vide communication dated 21th April, 1990 to maintain reservation provisions and to comply with the reservation provisions. Nine posts have been filled in by the petitioner and two roster posts one meant for schedule caste and one meant for schedule tribe are carry forward and as the petitioner was directed to fill in these two posts from the reserved category only. That communication was received by the petitioner and the petitioner is fully aware of the fact that against the sanctioned posts a ban has been imposed by the respondent - State. Selection could have been made by following the procedure of inviting the applications, constituting selection committee and selection of the candidates by the selection committee. The posts were reserved for scheduled tribe and scheduled tribe.

6. Further defence taken by the respondents is that the settlement entered into between the petitioner and two employees is not binding to the respondents as none of the respondents were party to the settlement.

7. The petitioner has filed rejoinder to the reply by which it has tried to project out that reservation quota as prescribed has already been filled in. The petitioner in the rejoinder has further admitted that (i) roster for schedule caste and schedule tribe and OEBC was made applicable to grant-in-aid institution by the Circular of the Government issued on 13th March 1990, (ii) the persons shown at Sr. No. 1 to 8 in roster were appointed prior to the circular dated 13-3-90 making the

roaster applicable to the grant-in-aid institutes. Person shown at Sr. No. 9 was appointed in the year 1991 with the approval of the Department of Social Welfare Department. The petitioner has tried to give out the picture as if these two persons were appointed against the sanctioned posts by the Government in the institution of grant-in-aid which is factually incorrect.

8. Learned counsel for the petitioner contended that these two persons were working since 1984 and their services were to be regularised at one point of time more so when they approach with the prayer of regularisation of their services and to pay them salary and the pay-scale. In view of this fact, learned counsel for the petitioner contended that the petitioner has rightly entered into the settlement with these two employees to give them the benefit of regularisation of their service from 1-1-1993 and pay-scale. As these two persons were regularised it is the obligatory on the part of the respondent to release the grant for these two persons from 1-1-1993. It has been next contended that the ground given by the respondents for not releasing the grant for these two employees is wholly arbitrary and unjustified.

9. On the other hand, learned counsel for the respondents submitted that the order which has been passed by the tribunal on the basis of the settlement between the petitioner and two persons is not binding on the respondents and as such on the basis of that settlement the petitioner cannot take any benefit. Carrying out this contention further, learned counsel for the respondents urged that otherwise also the proceedings initiated against the petitioner before the industrial tribunal by those two persons u/s 33C (2) of the Act for regularisation of their services and for giving them regular pay scale were not maintainable in view of the latest pronouncement of the Apex Court. It has next been contended that these two persons were appointed by the petitioner on adhoc basis and on fixed salary to be paid from its own fund and merely by entering into compromise with these two persons they cannot be taken on regular employment on the sanctioned grant-in-aid posts. For appointment on sanctioned grant-in-aid posts recruitment could have been made after the applications have been invited from the open market and selection committee has been constituted and candidates are selected by the selection committee. On the basis of this order their appointments cannot be taken to be regular appointment and more so as if the appointments are made against grant-in-aid posts. It is a case where before entering

into the settlement the petitioner has not taken permission of the Government nor it has taken in confidence that the settlement with these two persons will be for the sanctioned grant-in-aid posts. These two persons were the employees of the petitioner and after it agreed to regularise their service and to pay them regular pay scale, it is its own responsibility and liability which it has to carry out and it cannot be put or shift to the respondents. There was ban on the appointment way back from 28th October, 1991 and despite of having knowledge of the circular the petitioner has deliberately entered into settlement with these two persons in the proceedings initiated by them before the industrial tribunal. Otherwise also these two posts were reserved for the scheduled caste and scheduled tribe and these posts could not have been filled in by the candidates under general category. Replying to the petitioner's rejoinder learned counsel for the respondents contended that earlier appointments made by the petitioner prior to 13 March, 1990 were not made against the reserved posts. It was an open and general recruitment. So, even if some scheduled caste and scheduled tribe candidates have been selected it cannot be said that they were selected against the reserved quota of vacancy. Reservation for the employment to the grant-in-aid institution has been brought into force admittedly from 13th March, 1990 as per the case of the petitioner and from 21st April, 1990 as per the case of the respondents. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

10. The contention of the learned counsel for the respondent that the proceedings initiated by these two employees against the petitioner before the industrial tribunal, Ahmedabad u/s 33C (2) of the Act were without jurisdiction prima facie is of substance in view of the latest pronouncement of the Apex Court in the case of Muncipal Councillor, Delhi Municipal Coproation Vs. Ganesh Razak, JT 1994 (7) SC 476. However, the respondents have not challenged before this Court the order passed by the Industrial Tribunal, Ahmedabad, I do not consider it to be appropriate to decide this question in these proceedings.

11. In the present case, it is an admitted fact that these two persons were appointed in the year 1984 on adhoc basis and on fixed salary by the petitioner and they have been paid salary for all these years by the petitioner from its own source. It is clear that these two persons were not appointed against sanctioned

grant-in-aid posts. They are the employees of the petitioner who have been appointed by it and to be paid salary by it to them. Against sanctioned grant-in-aid posts in the institution recruitment could have been made by the petitioner only in case ban is not there and after taking appropriate sanction of the respondents and thereafter by following procedure as laid down for the recruitment to be made in the public employment. The claim of the petitioner for release of grant-in-aid for these two persons is solely based on the order of the industrial tribunal, Ahmedabad which has been passed in the proceedings initiated by those two persons u/s 33C (2) of the Act. That order is passed on the basis of the settlement arrived at between the petitioner and these two employees. The respondents were not party to the settlement and the proceedings. In view of these facts, the order which has been passed on the basis of the settlement aforesaid by the industrial tribunal is not binding on the respondents. Not only this as it is an order which has been passed on the basis of what the petitioner had agreed is not binding on the respondents. Apart from this, this order of the industrial tribunal, Ahmedabad does not give any legally enforcible right to the petitioner. This settlement and the order passed by the industrial tribunal, Ahmedabad thereon is binding in between the petitioner and those two employees. In case the petitioner does not stand to its commitment as agreed in the settlement these two employees may have enforceable right against the petitioner. I fail to see any justification much more legal justification in the case of the petitioner seeking to enforce this order of the industrial tribunal, Ahmedabad against the respondents. Brevity of the contract of the employment was in between the petitioner and those two employees. Moreover, it was not the case of those two employees before the industrial tribunal that they should be regularised against two sanction grant-in-aid posts. Their claim was against the petitioner, who was their employer and whatever order has been passed on the basis of settlement in between these two employees and the petitioner is only to be honoured and to be given effect by the petitioner from its own fund. In case, such course is permitted to be adopted by the institutions receiving grant-in-aid their employees are ultimately to be made permanent on the sanctioned grant-in-aid posts and it will open flood gate of corruption, favouritism and nepotism. It will be very convenient for unscrupulous persons engaged in the institutions receiving the grant-in-aid to engage first the employee on daily wages or on consolidated salary or on adhoc basis and then on raising industrial dispute or by taking

any other proceedings the institution will enter into settlement to regularise their services and pay in the regular pay-scale and that settlement, though made by that institution will become enforceable on the State Government. That course is not only illegal but also speaks of malice and favouritism and the same is not legally binding on the respondents and cannot be enforceable by invoking article 226 of the Constitution of India. If such course is permitted to be adopted and given effect by this Court under Article 226 of the Constitution of India then daily wages appointment, adhoc appointments, temporary appointments etc. will become conduit pipe for regular appointments against the sanctioned grant-in-aid posts.

12. Entry of these two employees in the institution of the petitioner was also contrary to the provisions as contained in Articles 14 and 16 of the Constitution of India. In the matter of appointment of the candidates on regular posts for which the Government gives grant, every eligible candidate as a citizen of the country has a fundamental right of consideration for the employment. Even if it is taken that the rules for recruitment of candidates in class IV service in the institution are not there the provisions of Article 14 and 16 of the Constitution of India are there. However, it is not the case of the respondents or the petitioner that necessary provision has not been made for laying down the procedure for recruitment to be made on the sanctioned grant-in-aid posts. The procedure as what it transpires from the reply to the special civil application filed by the respondent is that to call the applications from the open market from the eligible candidate and constitute selection committee and to prepare select list on the basis of the recommendations of the selection committee. The appointments are also subject to the approval of the respondents. As earlier said, it is not the case of the petitioner that these two persons were given appointment on the adhoc basis and on fixed salary after they have been selected in the open selection. So the entry of these two persons in the service of the petitioner institution on these facts may be termed as de hors of the recruitment procedure laid down or the provisions contained in Articles 14 and 16 of the Constitution of India. If the prayer of the petitioner is accepted and the respondents are directed to release grant for these two persons this Court will perpetual illegality and unconstitutionality. It will give recognition to the appointments of these two persons who were appointed de hors of the recruitment procedure or provisions of Articels 14 and 16 of the Constitution of India. This

court will not perpetuate illegally sitting under article 226 of the Constitution of India. Yet there is another aspect that if what the learned counsel for the respondents states that industrial tribunal has no jurisdiction in the matter which was the subject matter of the proceedings initiated by those two persons for regularisation of their service and for giving them regular pay scale in correct then in that eventuality if this court direct the respondents to release grant-in-aid for these two persons it will perpetuate an illegality. In view of facts aforesaid and the position of law I do not find any illegality in the order of the respondent to decline the prayer of the petitioner for release of grant-in-aid for these two persons.

14. In the result, this special civil application fails and the same is dismissed. Rule discharged with the costs which is quantified to Rs. 1,000/-.

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